

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 112 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ASHOK RAMJI PATEL

Versus

STATE OF GUJARAT  
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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The District Magistraste, Surendranagar, passed an order on August 29, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Ashok Ramji Patel of Limdi under the provisions of the

said Act.

2. The detaining authority considered three offences registered against the detenu under Bombay Prohibition Act. The authority also considered statements of three witnesses and exercised powers under Section 9(2) of the PASA Act in respect of all the three witnesses by not disclosing their identity. The detaining authority was satisfied that the detenu is a bootlegger and is required to be immediately prevented from continuing his activities which are detrimental to public order.

3. The detenu has challenged the order of detention on various counts. However, Ms. Patel has restricted her arguments to the fact that the detaining authority has not verified the statement of one of the three witnesses whereas the privilege is claimed in respect of all the three witnesses and, therefore, the exercise of powers under Section 9(2) of the PASA Act qua the third witness is without the subjective satisfaction about the fear expressed by that witness qua the detenu, which has affected the right of the detenu of making an effective representation and, therefore, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it is clear from the grounds of detention itself that the statements have been verified by the Dy.S.P. and two of which are personally verified by the detaining authority. It is also apparent that the privilege is claimed by the detaining authority in respect of the three witness and their identity is not disclosed. The exercise of powers under Section 9(2) of claiming privilege in respect of the third witness, therefore, is without recording a subjective satisfaction about the genuineness of the fear expressed by the witness and, therefore, the exercise of privilege in respect of that witness is bad in law. This has affected the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. This would adversely affect the right of the detenu and, therefore, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 29, 1999, passed against the detenu is hereby quashed. The detenu-Ashok Ramji Patel is ordered to be set at liberty forthwith, if not required in any other matter.

Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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